

- (1) Whether claimant's injury arose out of and in the course of her employment with IBP, Inc.

(2) Whether the Administrative Law Judge exceeded his jurisdiction by denying part of the relief requested by claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

(1) That the claimant has failed to meet the requisite burden of proof in establishing that the alleged injury arose out of and in the course of her employment with respondent.

The claimant was employed by IBP, Inc. in a data entry position in the scalehouse accounting office which required the use of a computer keyboard. The claimant alleges she suffered an accidental injury from October of 1990 through July 28, 1993, with injuries to her right and left wrists.

The claimant was terminated on July 28, 1993, for reasons not pertaining to her workers compensation claim.

The claimant was examined one time by her family doctor, Dr. Eric Oppliger, who was treating her for other medical difficulties in October of 1990. The claimant testified that she was instructed when she was hired to report any accidents, injuries or health problems to the company nurse. During the period from October of 1990 through July 28, 1993, the claimant did not report any difficulties with her hands or any other part of her body to the company nurse. The claimant applied for unemployment after her leaving employment with IBP and indicated that she was ready, willing and able to work. The claimant never requested medical treatment from the respondent.

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App.2d 435, 680 P.2d 556 (1984).

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all of the various conditions on which his right to recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. Tovar v. IBP, Inc., 15 Kan. App.2d 782, 786, 817 P.2d 212 (1991).

The evidence in the record does not support claimant's contention that her condition arose out of and in the course of her employment. The fact that the claimant did not by her own admissions report her injury to the medical nurse as instructed by the employer, request treatment or make any other claim for benefits until January of 1994 further evidences the fact that claimant has not met her burden of proof. Claimant has failed to meet her burden of proof to establish from the evidence in the record that her claimed injuries arose out of and in the course of her employment. The evidence that she failed to report to the nurse and seek treatment contradicts claimant's statements regarding the issues in this case.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Thomas F. Richardson, dated March 23, 1994, ordering medical treatment for claimant's right hand is hereby reversed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

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Thomas F. Richardson, Administrative Law Judge
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